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(2) Any rule issued in a proceeding in which a hearing is held is not based exclusively on the record of the hearing; and

(3) Hearings are conducted in accordance with section 553 of title 5, U.S.C.; section 556 and 557 of title 5 do not apply to hearings held under this part.

(c) The Administrator conducts or designates a representative to conduct any hearing held under this part. The Chief Counsel serves or designates a member of his staff to serve as legal officer at the hearing.

§211.27 Publication of adopted rules and withdrawal of notices.

Whenever the Administrator adopts a final rule or withdraws an advance notice or notice of proposed rulemaking, the final rule or a notice of withdrawal is published in the FEDERAL REGISTER.

§211.29 Petitions for reconsideration of a final rule.

(a) Any person may petition the Administrator for reconsideration of any rule issued under this part. Except for good cause shown, such a petition must be submitted not later than 60 days after publication of the rule in the FEDERAL REGISTER, or 10 days prior to the effective date of the rule, whichever is the earlier. The petition must contain a brief statement of the complaint and an explanation as to why compliance with the rule is not possible, is not practicable, is unreasonable, or is not in the public interest.

(b) If the petitioner requests consideration of additional facts, he must state the reason they were not presented to the Administrator within the allotted time.

(c) The Administrator does not consider repetitious petitions.

(d) Unless the Administrator specifically provides otherwise, and publishes notice thereof in the FEDERAL REGISTER, the filing of a petition under this section does not stay the effectiveness of a rule.

[41 FR 54181, Dec. 13, 1976, as amended at 42 FR 27593, May 31, 1977]

§211.31 Proceedings on petitions for reconsideration of a final rule.

(a) The Administrator may grant or deny, in whole or in part, any petition

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for reconsideration of a final rule without further proceedings. Each petition shall be decided not later than 4 months after its receipt by the Docket Clerk. In the event he determines to reconsider a rule, the Administrator may amend the rule or initiate a new rule-making proceeding. An appropriate notice is published in the FEDERAL REGISTER.

(b) Whenever the Administrator determines that a petition should be granted or denied, a notice of the grant or denial of a petition for reconsideration is sent to the petitioner. When a petition is granted, a notice is published in the FEDERAL REGISTER.

(c) The Administrator may consolidate petitions relating to the same rule.

§211.33 Direct final rulemaking procedures.

(a) Rules that the Administrator judges to be noncontroversial and unlikely to result in adverse public comment may be published in the final rule section of the FEDERAL REGISTER as direct final rules. These include noncontroversial rules that:

(1) Affect internal procedures of the Federal Railroad Administration, such as filing requirements and rules governing inspection and copying of documents,

(2) Are nonsubstantive clarifications or corrections to existing rules,

(3) Update existing forms, and

(4) Make minor changes in the substantive rules regarding statistics and reporting requirements.

(b) The FEDERAL REGISTER document will state that any adverse comment or notice of intent to submit adverse comment must be received in writing by the Federal Railroad Administration within the specified time after the date of publication and that, if no written adverse comment or request for oral hearing (if such opportunity is required by statute) is received, the rule will become effective a specified number of days after the date of publication.

(c) If no adverse comment or request for oral hearing is received by the Federal Railroad Administration within the specified time of publication in the

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FEDERAL REGISTER, the Federal Railroad Administration will publish a notice in the FEDERAL REGISTER indicating that no adverse comment was received and confirming that the rule will become effective on the date that was indicated in the direct final rule.

(d) If the Federal Railroad Administration receives any written adverse comment or request for oral hearing within the specified time of publication in the FEDERAL REGISTER, a notice withdrawing the direct final rule will be published in the final rule section of the FEDERAL REGISTER and, if the Federal Railroad Administration decides a rulemaking is warranted, a notice of proposed rulemaking will be published in the proposed rule section of the FEDERAL REGISTER.

(e) An “adverse” comment for the purpose of this subpart means any comment that the Federal Railroad Administration determines is critical of the rule, suggests that the rule should not be adopted, or suggests a change that should be made in the rule.

[72 FR 10087, Mar. 7, 2007]

Subpart C—Waivers

§ 211.41 Processing of petitions for waiver of safety rules.

(a) *General.* Each petition for a permanent or temporary waiver of a safety rule, regulation or standard filed as prescribed in §§ 211.7 and 211.9, is referred to the Railroad Safety Board for decision and decided not later than 9 months after receipt.

(b) *Notice and hearing.* If required by statute or the Administrator or the Railroad Safety Board deems it desirable, a notice is published in the FEDERAL REGISTER, an opportunity for public comment is provided, and a hearing is held in accordance with § 211.25, before the petition is granted or denied.

(c) *Grants.* If the Railroad Safety Board determines that the petition complies with the requirements of § 211.9 and that a waiver is justified, it grants the petition. Conditions may be imposed on the grant of waiver if the Board concludes they are necessary to assure safety or are in the public interest.

(d) *Denials.* If the Railroad Safety Board determines that the petition

does not comply with the requirements of § 211.9 or that a waiver is not justified, it denies the petition.

(e) *Notification.* Whenever the Railroad Safety Board grants or denies a petition, a notice of that grant or denial is sent to the petitioner. When a petition has been decided, interested persons are also notified or a notice is published in the FEDERAL REGISTER.

(f) *Petition for reconsideration.* Any person may petition for reconsideration of the grant or denial of a waiver under procedures set forth in § 211.57. Each petition shall be processed in accordance with § 211.59.

§ 211.43 Processing of other waiver petitions.

(a) *General.* Except as provided in § 211.41, each petition for a permanent or temporary waiver of a rule, regulation or standard shall be filed and processed as prescribed in §§ 211.7 and 211.9.

(b) *Notice and hearing.* If required by statute or the Administrator deems it desirable, a notice is published in the FEDERAL REGISTER, an opportunity for public comment is provided, and a hearing is held in accordance with § 211.25, before the petition is granted or denied.

(c) *Grants.* If the Administrator determines that the petition complies with the requirements of § 211.9 and that a waiver is justified, he grants the waiver. Conditions may be imposed on the grant of waiver if the Administrator concludes they are necessary to achieve the purposes of programs affected by the grant of waiver or are otherwise in the public interest.

(d) *Denials.* If the Administrator determines that the petition does not comply with the requirements of § 211.9 or that a waiver is not justified, he denies the waiver.

(e) *Notification.* Whenever the Administrator grants or denies a petition, a notice of the grant or denial is sent to the petitioner. When a petition has been decided, interested persons are also notified or a notice is published in the FEDERAL REGISTER.

(f) *Petitions for reconsideration.* Any person may petition for reconsideration of the grant or denial of a waiver under procedures set forth in § 211.57.